IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

MFA.No. 682 of 2002()

IC.40/2000 of EMPLOYEES' INSURANCE COURT, PALAKKAD

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APPELLANT/APPLICANT:

M/S. JOCO CABLES, CHIYYARAM,
THRISSUR-680 026, REPRESENTED BY ITS
PARTNER, DAVID PAUL KATTUKARAN.

BY ADV. SRI.V.P.SUKUMAR

RESPONDENT/OPPOSITE PARTY IN THE APPLICATION:

EMPLOYEES STATE INSURANCE CORPORATION,
THRISSUR.

BY ADV. SRI.P.SANKARANKUTTY NAIR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

M.F.A.No.682 of 2002

Dated, this the 31st day of July, 2007

JUDGMENT

The applicant in I.C.No.40/2000 on the file of the Employees' Insurance Court, Palakkad is the appellant. He is challenging Ext.A1 show cause notice dated 25.5.2000 by which he was required to show cause why he should not be prosecuted for failure to pay contribution of Rs.19,147/- for the period from 2.1.1997 to 31.3.2000 and also to comply with other provisions of the Employees' State Insurance Act (for short 'the Act'). On getting that show cause notice the appellant filed an application under Section 75 of the Act before the Insurance Court alleging that the respondent Corporation has already taken a decision to club his establishment with another establishment by name M/s. Anton Cables. It is true that the respondent filed a counter contending that both establishments are to be clubbed together for the purpose of deciding the question of coverability. Insurance Court considered the matter on its merits and found that both establishments are to be clubbed together. Challenging that finding this appeal is filed.

2. Ext.A1 is a show cause notice dated 25.5.2000. Materials on record show that immediately on receipt of Ext.A1 the appellant rushed to the Insurance Court and filed I.C.No.40/2000. The appellant ought to have appeared before the competent officer of the respondent Corporation, who issued the show

cause notice. The appellant ought to have filed his objections and produced evidence to substantiate his contentions.

3. Shri P. Sankarankutty Nair, learned counsel appearing for respondent Corporation, also had to admit that matter is only at the show cause stage and no final order has been passed. So, I am of the view that the petition before the Insurance Court as well as this appeal are premature. The proper course open to me is to allow this appeal, set aside the order passed by the Insurance Court in I.C.No.40/2000 and close I.C.No.40/2000 without prejudice to the right of the appellant/applicant to appear before the respondent Corporation and file his objections to Ext.A1 show cause notice. In view of passage of time, I am of the view that it is only just and proper to grant one month's time to the appellant to appear before the respondent Corporation and file his objections to Ext.A1 show cause notice. It is open to the respondent Corporation to withdraw Exhibit A1 show cause notice and issue fresh show cause notice and initiate fresh proceedings against the appellant in accordance with law. If it is decided to initiate fresh proceedings, the respondent shall issue fresh show cause notice in which case appellant can raise all contentions including those which he has raised in the present proceedings and adduce evidence. If the ultimate decision is against the appellant, this judgment shall not be a bar for him to challenge that decision in accordance with law.

In the result, appeal is allowed. Order passed by the Insurance Court in

I.C.No.40/2000 is hereby set aside. I.C.No.40/2000 itself is closed on the ground that it is premature. Appellant is directed to appear before the respondent Corporation, file his objections to Ext.A1 show cause notice and produce documents to substantiate his case within a period of one month from the date of receipt of a copy of this judgment.

C.M.P.No.4054/2002 will stand dismissed.

K. PADMANABHAN NAIR,
JUDGE

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K.PADMANABHAN NAIR, J.

M.F.A.No.682 of 2002

JUDGMENT

31st July, 2007.